IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

-

WRIT PETITION No.7979 of 2005

Between:

K. John Joseph, S/o. Dr. K.V. John,
Kakinada.

..... PETITIONER

AND

1 The District Collector-cum-Spl. Officer, Kakinada Municipal Corporations, Kakinada, E.G.District.
2 The Commissioner, Kakinada, Municipal Corporation, Kakinada.

3. Shaik Aijazuddin, Advocate, D.No. 20-4-27,

Deen House, Mohiuddin Street, Kakinada,

East Godavari District.

(R-3 is impleaded as per orders dated 20-4-2005 in

W.P.M.P.No. 11178 of 2005)

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus or any other writ, order or direction, declaring the action of the respondents in inviting the applications vide notice ROC.No.3251s 2004 C1, dt.15.3.2005 for the appointment of standing counsel of Kakinada Municipal Corporation in violation of Rule 2 (1) of Appointment of standing counsels, payment of Fees and Travelling Allowances and procedure for filing of appeal in Civil Cases Rules 1968 as illegal, Null and void for a consequential order directing the

respondents to drop all further proceedings pursuant to the impugned notice dt.15.3.2005 by permitting the petitioner to continue as standing counsel of the Kakinada Municipal Corporation for the 2nd term in term of rule 2(1) of the Rules.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondents: MR.S.NAGESWARA REDDY

The Court made the following:

ORDER:

1. This writ petition has been filed by K.John Joseph with a prayer to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in inviting the applications vide notice ROC No.3251S2004C1, dated 15-3-2005 for the appointment of standing counsel for Kakinada Municipal Corporation is in violation of Rule 2(1) of Appointment of Standing Counsel, payment of Fees and Travelling allowances and procedure for filing of appeal in Civil cases Rules 1968.

2. The petitioner was standing counsel of Kakinada Municipality-2nd respondent, having been appointed as such, on 26-5-2001 for a period of three years. His tenure expired by 26-5-2004. However, he continued to be the standing counsel. There seem to be no written orders extending his period of tenure. Subsequently, the Kakinada Municipality has been upgraded as Municipal Corporation with effect from 1-1-2005. Consequent to upgradation of Kakinada Municipality as Municipal Corporation, the Special Officer came to be appointed under Section 17 of the A.P. Municipal Corporation Act. A resolution came to be passed by the Special Officer rejecting the proposal for renewal of tenure of the petitioner as standing counsel. Consequently notification has been issued inviting applications for appointment of standing counsel in 2nd respondent Corporation. In pursuance of the notification the

3rd respondent has been appointed as Standing Counsel. Questioning the very issuance of notification, this writ petition has been filed by the petitioner.

3. Respondents No. 1 to 3 filed counter affidavits. It is stated in the counter affidavit filed on behalf of the 2nd respondent, that the Government in exercise of powers conferred under Sub-Section (1) of Section 17 of the Andhra Pradesh Municipal Corporation Act has appointed the District Collector, East Godavari as Special Officer to the newly constituted Kakinada Municipal Corporation under G.O.Ms.No.12 M.A., dated 6-1-2005 to exercise powers, perform duties and discharge the functions of the corporation, the standing committee, the commissioner and the wards committee.

4. Para 10 of the counter affidavit reads as follows:

> *"It is submitted that, in exercise of the powers conferred under sub Section (1) of the Section 17 of the Andhra Pradesh municipal Corporation Act, 1994, the Government of Andhra Pradesh has appointed the District Collector, East Godavari as Special Officer, to the newly constituted Kakinada Municipal Corporation under G.O.Ms.No. 12 M.A., dated 6-1-2005, to exercise powers, perform duties and discharge the functions of the corporation, the standing committee, the commissioner and the wards committee. The special officer of the Municipal corporation is therefore competent to appoint the Municipal Standing counsel, exercising the powers of Corporation. The Council/Corporations powers are vested in the special Officer. Till the Council is constituted, the Special Officer is competent to do all the acts of the council".*

5. Heard the learned counsel for the petitioner and learned Standing Counsel appearing for the Respondents No.1 and 2 and learned counsel appearing for the 3rd respondent.

6. Learned counsel for the petitioner submits that appointment of standing counsel is governed by the Rules framed in exercise of power conferred under Sub-Section (1) of Section 17 of the Andhra Pradesh Municipal Corporation Act (for brevity "the Act"). Under Rule 2(1) of the Act, the council may extend tenure of the Standing counsel for second time, if his work has been found satisfactory, without calling for the application as laid down in Sub Rule 3 and since the writ petitioner has been

continuing as standing counsel of the 2nd respondent Corporation, there is no need for the Special Officer to call for fresh panel for appointment of the standing counsel. It is profitable to extract Rule 2(1) of the Act, which deals with appoint of Standing Counsel and it is thus,

> *"2. (1) A municipal council may appoint a standing counsel on a fixed remuneration per month as retaining fee for a term not exceeding three years at a time for giving legal advice and for rendering services out of Court in connection with the legal affairs of the Municipality and for attending Civil and Criminal cases where the engagement of a counsel is necessary. The counsel may appoint him for a second time if his work has been found satisfactory without calling for applications as laid down in Sub-rule (3)*

7. Much emphasis has been laid by the counsel appearing for the petitioner that since the work of the petitioner as standing counsel of Kakinada Municipality has been found satisfactory, there is no reason for the Special Officer to invite applications for appointment of standing counsel.

8. On a thorough reading of the above referred Rules, it indicate that the council may extent the tenure of the existing standing counsel. There is no right as such conferred on the existing standing counsel to seek extension of the tenure. The Special Officer exercised the powers under Section 17 of the Andhra Pradesh Municipal Act and called for the applications and issued notification for appointment of standing counsel. Such is the case, the action of the Special Officer of the 2nd respondent cannot be found fault.

9. Therefore, the writ petition is devoid of merit and is hereby dismissed. No order as to costs.

B.Seshasayana Reddy,J

13th July, 2005

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector-cum-Spl. Officer, Kakinada Municipal Corporations, Kakinada, E.G.District.
2 The Commissioner, Kakinada, Municipal Corporation, Kakinada.

3 2 CD copies

4 1 CC to MR.DHANAMJAYA

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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13TH JULY, 2005